



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

COPY MAILED

MAY 10 2007

OFFICE OF PETITIONS

In re Patent No. 7,087,983	:	
Tetsuya Itano, et al.	:	DECISION ON REQUEST
Issue Date: August 8, 2006	:	FOR RECONSIDERATION OF
Application No. 10/665,593	:	PATENT TERM ADJUSTMENT
Filed: September 22, 2003	:	and
Attorney Docket No. 03500.017568	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)" filed October 10, 2006. Patentees request that the patent term adjustment indicated in the patent be corrected from one hundred and eight (108) days to one hundred twelve (112) days.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of One hundred twelve (112) days.

On August 8, 2006, the above-identified application matured into U.S. Patent No. 7,087,983. The instant request for reconsideration, filed October 10, 2006 (a Tuesday after a Federal Holiday), was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 108 days.

Patentees dispute the reduction of 4 of the 120 days presently assessed against patentees due to the filing of a Miscellaneous Incoming Letter because patentees contend that the mailing of an Examiner Interview Summary ended the period of reduction.

On March 7, 2006, applicants filed an IDS after payment of the issue fee. On June 30, 2006, the examiner mailed an Interview Summary, which states that because no RCE was filed with the IDS on March 7, 2006, the IDS would not be considered but would be retained in the application file.

Patentees contend that they should be responsible for only 116 days of delay.

In pertinent part, 37 CFR 1.704 Reduction of period of adjustment of patent term states:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

- (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
- (ii) Four months

Patentees' argument is well-taken. The June 30, 2006 Interview Summary, *under the facts and circumstances of this particular case*, is considered an "Office action" or "notice" in response to the paper filed after the Notice of Allowance was mailed. The period of adjustment should have been reduced by the number of days beginning on the date the IDS was filed and ending on the

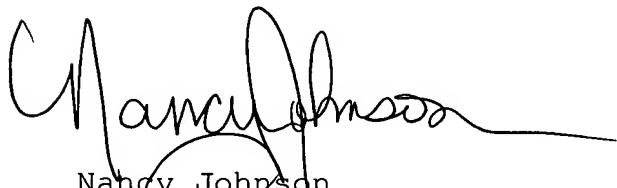
mailing date of the Interview Summary or 116 days, which is less than four months, or 120 days.

In view thereof, the patent term adjustment indicated in the patent should have been one hundred and twelve (**112**) days.

The fee under § 1.18(e) is required on petition under § 1.705(d) and will not be refunded. Nor will the fee be waived.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by ONE HUNDRED AND TWELVE (112) days.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,087,983 B1

DATED : August 8, 2006

INVENTOR(S) : Tetsuya Itano ; Fumihiro Inui ; Masanori Ogura

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (108) days

Delete the phrase "by 108 days" and insert -- by 112 days--